

IN THE MATTER OF THE ARBITRATION BETWEEN

Ohio Department of Development
Employer

Grievance No: DEV-2024-02129-14

And

Ohio Civil Service Employees Association
Union

AND

Grievant Brian Jamison

Arbitrator: Meeta A. Bass

APPEARANCES FOR THE PARTIES

Advocate for the Employer:

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Procedural History

Ohio Department of Development is hereinafter referred to as “Development,” “Agency,” or “Employer.” Ohio Civil Service Employees Association is hereinafter referred to as “Union.” Brian Jamison is hereinafter referred to as the “Grievant.”

The Union submitted Grievance Number DEV-2024-02129 to the Employer on July 25, 2024, pursuant to Article 25 of the parties’ Collective Bargaining Agreement, effective April 21, 2021 - February 28, 2024. On June 18, 2024, Development conducted a pre-disciplinary hearing. The pre-disciplinary Hearing Officer determined that just cause existed to remove the Grievant from his position for violating DEV Policies 8.2 and failing to uphold the code of ethics for mandated certification requirements. By letter dated July 24, 2024, Development terminated the Grievant from employment.

On July 25, 2024, the Grievant filed this grievance alleging a violation of Articles 24.01, 24.02, and 24.06. The Statement of Grievance reads:

“The Grievant, Brian Jamison, was terminated from his position of Energy Analyst 2 by the Department of Development without just cause. Management is in violation of the contract between the State of Ohio and the Ohio Civil Service Employees Association. “
The Union requested the Grievant be immediately reinstated to his position of Energy Analyst 2/ Technical Monitor and made whole, including full restoration of lost wages, time, retirement contribution, and any other benefits owed.

The Step 2 Response denied the grievance in its entirety. The Step 2 Hearing Officer determined that Development complied with Article 24 of the parties’ Agreement, and the Grievant was justifiably terminated from his position. She found that Grievant had knowledge of rules from his review and completion of Development’s team handbook policies. She also accepted and adopted the findings of the Ohio Department of Taxation’s administrative investigation findings published on May 29, 2024.

The parties were unable to resolve this grievance, so it was advanced to arbitration. Pursuant to the CBA between the Employer and the Union, the parties have designated this Arbitrator to hear and decide said grievance. The parties presented and argued their positions on April 4, 2024, at the Office of Collective Bargaining, located at 4200 Surface Road, Columbus, Ohio 43228.

Issue:

Was the Grievant, Brian Jamison, terminated for just cause? If not, what shall the remedy be?

Stipulated Facts:

1. The grievance is properly before the Arbitrator.
2. The Grievant was hired by the State of Ohio on June 23, 2009.
3. The Grievant's position was Energy Analyst 2/Technical Monitor.
4. The Grievant was presented with a removal notice on July 24, 2024, for violations of Development policies 8.2(1)(B)(C)(F): Falsifying or providing a fraudulent or altered document, lying, providing false or inaccurate information regarding assignments, 8.2. (3) (E): Actions that could compromise the mission of Development, and 8.2 (6)(b): Ohio Revised Code 124.34.
5. The Grievant was placed on administrative leave commencing June 30, 2024, through July 23, 2024.
6. The Grievant was terminated from employment on July 25, 2024

During the course of the hearing, both parties were afforded the full opportunity to present evidence, examine and cross-examine the witnesses, and make oral arguments. The following individuals testified at the hearing:

Witnesses:

Management Witness:

1. Christian Thomas
2. Ryan Kessel, Weatherization Manager

Union Witness:

1. Brian Jamison, Grievant

Exhibits:

The parties admitted the following exhibits:

Joint Exhibits:

1. Contract between the State of Ohio and Ohio Civil Service Employees Association AFSCME, Local 11
2. Grievance Trail
 - a. Grievance Snapshot
 - b. Development Step 2 Response
3. Ohio Home Weatherization Policies and Procedures Manual (Effective 07/2023) as referenced in the Administrative Investigation Report.

4. Home Weatherization Assistance Program (HWAP) Administrative and Technical Monitoring Manual (Effective 09/2023) as referenced by the Grievant in the Administrative Investigation Report.
5. Training Transcripts:
Ohio Learn
Corporation for Ohio Appalachian Development
6. Disciplinary Package:
 - a. Administrative Investigator's Report & Findings
Witness Statements include Grievant, Torres, Kashuba, Murray and Speicher
 - b. Acknowledgment of Notice of Pre-Disciplinary Hearing
 - c. Work Rules and Discipline Grid
 - d. Pre-Disciplinary Hearing Report
 - e. Termination Letter
7. Final Certification documents as referenced in the Administrative Investigation Report
8. Brian Jamison performance evaluations (2019-2023)
9. Employee History Report (EHOC)
10. 2023 Montrk Report: Grievant details for Kno-Ho Co

Union Exhibits:

1. Remote Monitoring, Effective January 2021
2. Memorandum regarding Weatherization Review dated April 5, 2021
3. Email dated February 29, 2024, regarding PY2023 HWAP Technical Monitoring Visit 03/19/2024
4. Office of Community Enhancements Organizational Chart
5. Ohio Weatherization Field Guide SWS- Aligned Edition
6. Flowchart for Completion of Job

The parties agreed to submit closing statements via email by the close of business on May 5, 2024, when the record was closed.

PERTINENT PROVISIONS OF COLLECTIVE BARGAINING AGREEMENT AND POLICIES

ARTICLE 24 – DISCIPLINE

24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.05. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. For abuse cases, employees of the Department of Developmental Disabilities (DODD) shall be governed by the Ohio Administrative Code (OAC) 5123-17-02. Employees of the Lottery Commission shall be governed by ORC Section 3770.021.

Section 24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

- a. One (1) or more written reprimand(s);
- b. One (1) or more working suspension(s). A minor working suspension is a one (1) day suspension, a medium working suspension is a two (2) to four (4) day suspension, and a major working suspension is a five (5) day suspension. No working suspension greater than five (5) days shall be issued by the Employer. If a working suspension is grieved, and the grievance is denied or partially granted and all appeals are exhausted, whatever portion of the working suspension is upheld will be converted to a fine. The employee may choose a reduction in leave balances in lieu of a fine levied against him/her.
- c. One (1) or more day(s) suspension(s). A minor suspension is a one (1) day suspension, a medium suspension is a two (2) to four (4) day suspension, and a major suspension is a five (5) day suspension. No suspension greater than five (5) days shall be issued by the Employer;
- d. Termination.

Disciplinary action shall be initiated as soon as reasonably possible, recognizing that time is of the essence, consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

24.06 - Imposition of Discipline

The Agency Head or designated Deputy Director or equivalent shall make a final decision on the recommended disciplinary action as soon as reasonably possible after the conclusion of the pre-discipline meeting. The decision on the recommended disciplinary action shall be delivered to the employee, if available, and the Union in writing within sixty (60) days of the date of the pre-discipline meeting, which date shall be mandatory. It is the intent to deliver the decision to both the employee and the Union within the sixty (60) day timeframe; however, the showing of delivery to either the employee or the Union shall satisfy the Employer's procedural obligation. At the discretion of the Employer, the sixty (60) day requirement will not apply in cases where a criminal investigation may occur and the Employer decides not to make a decision on the discipline until after disposition of the criminal charges.

The employee and/or Union representative may submit a written presentation to the Agency Head or Acting Agency Head.

If a final decision is made to impose any discipline, including oral and written reprimands, the employee, if available, and Union shall be notified in writing. The OCSEA Chapter President shall notify the Agency Head in writing of the name and address of the Union representative to receive such notice. Once the employee has received written notification of the final decision to impose discipline, the disciplinary action shall not be increased.

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

The Employer will not impose discipline in the presence of other employees, clients, residents, inmates or the public except in extraordinary situations which pose a serious, immediate threat to the safety, health or well-being of others.

An employee may be placed on administrative leave, without loss of pay (except in cases that fall within ORC Section 124.388(B)), or reassigned while an investigation is being conducted except that in cases of alleged abuse of patients or others in the care or custody of the State of Ohio, the employee may be reassigned only if he/she agrees to the reassignment or if the reassignment is to a position on the same shift and days off, without loss of pay and does not exceed thirty (30) days. For cases that fall within ORC Section 124.388(B) as referenced above, any payment due the employee under subsection (B) shall be based upon the employee's total rate plus any applicable roll call pay. For purposes of this paragraph, "without loss of pay" shall mean the employee's total rate plus any applicable roll call pay.

Home Weatherization Assistance Program Policies and Procedures Manual (effective September 2023) is incorporated herein as if fully rewritten:

Because clients are often difficult to contact or refuse entry, the list should contain enough jobs to ensure enough home visits can be scheduled. There are many factors to consider when selecting units to review:

- Housing type.
- Homes requiring an energy audit
- Multi-family projects
- Multi-county grantees
- Questionable Building Weatherization Reports.

Site Visit

Each home is unique, and the monitor will have to determine the most efficient way to review the project. The following should be used as a guideline for completing a technical quality assurance visit:

- Establish rapport with the customer
- Inspection of the exterior of the home
- Inspection of the interior of the home
- Complete file review

Complete all applicable diagnostic testing
Complete the Quality Assurance Form
Complete the Weatherization Audit Review Checklist
Thorough notes and photo documentation

The monitor should engage the customer by making proper introductions and explaining the purpose of the visit and the importance of getting the customer's feedback to improve the program.

A complete inspect of the interior and exterior of the home must be conducted. All measures that were installed must be examined to ensure they were installed properly and approved materials were utilized. Every area of the home must be inspected during the quality insurance visit to ensure all applicable energy conservation measures were installed and opportunities to reduce energy usage.

A thorough examination of the job file and supporting documentation should be completed. The Building Weatherization Report (BWR) should be reconciled to the work that was completed and the energy audit. The Final Certification Form in the job file must be completed by the state monitor.

Ohio Home Weatherization Assistance Program (HWAP) Policies and Procedures Manual (effective July 1, 2023) is incorporated herein as if fully rewritten:

Development Policy 8.2 Discipline Pertaining to Bargaining Unit Employees:

DEV Policy 8.2(1)(b) Falsify Documents: An employee falsifying any document during the course of their employment with Development may be subjected to:

- a. First offense Removal

DEV Policy 8.2(1)(c) Falsifying or Providing a Fraudulent or Altered Document: Any employee falsifying or providing a fraudulent or altered document during the course of their employment with Development may be subjected to:

- a. First Offense - Reprimand/Removal
- b. Second Offense - Suspension/Removal
- c. Third Offense - Removal

DEV Policy 8.2(1)(f) Lying or providing False or Inaccurate Information Regarding Assignments: An employee lying or providing false or inaccurate information regarding assignments during the course of their employment with Development may be subjected to:

- a. First Offense - Reprimand/Suspension
- b. Second Offense - Suspension
- c. Third Offense - Removal

DEV Policy 8.2(3)(e) Any action that could compromise the Mission of Development: An employee taking action that could compromise the mission of Development during the course of their employment with Development may be subjected to:

- a. First Offense - Reprimand/Suspension

- b. Second Offense - Suspension
- c. Third Offense - Suspension/Removal
- d. Fourth Offense - Removal

DEV Policy 8.2(6)(b)

No officer or employee shall be reduced in pay or position, fined, suspended, or removed, or have the officer's or employee's longevity reduced or eliminated, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, unsatisfactory performance, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance or nonfeasance in office, or conviction of a felony while employed in the civil service.

The severity of disciplinary action taken by Development against an employee who violates Ohio Revised Code Section 124.34 is determined based on the severity of the offense.

Remote Monitoring Office of Community Assistance (Effective January 2021)

The Office of Community Assistance (OCA) will complete all programmatic monitoring remotely for the calendar year 2021. The OCA program monitor will send an email notification to the agency a minimum of 15 days in advance of the deadline to upload all required documentation. The notification will contain the monitoring review tool specific to the program area to be reviewed. Please use this monitoring review tool to complete the required documentation to be uploaded into OCEAN for the scheduled monitoring.

The monitoring review tool provides the list of documents to be uploaded and each documents's naming convention. If a document is related to a specific client (a list of client numbers will be provided)it will need to be uploaded to the Documents Section of the Client Details page in OCEAN, as indicated by the review tool.

Once all required documents have been uploaded to OCEAN and received by the program monitor, a review of the information will be completed. The program monitor will then schedule a virtual exit interview with agency staff to discuss the results of the program monitor's review. A final monitoring report will be provided via email to the agency 30 business days after the exit interview.

STATEMENT OF FACTS:

The Department of Development administers the Ohio Home Weatherization Assistance Program (HWAP) under an agreement with the U.S. Department of Energy. The program is a federally funded initiative to enhance the energy efficiency of homes occupied by low-income individuals and families. Development hired the Grievant on June 22, 2009, as an Energy Analyst 2/Technical Monitor. As an Energy Analyst 2/Technical Monitor, the Grievant was responsible for ensuring that weatherization work performed by contractors met program standards and specifications. His duties included:

- Conducting on-site inspections of completed weatherization work.
- Verify that work was performed according to program guidelines and building codes.
- Completing and submitting accurate inspection reports.
- Ensuring compliance with all applicable federal, state, and local regulations.

The Office of Community Enhancements had three analysts, including the Grievant, who were responsible for performing technical monitor reviews. Technical monitors and Quality control inspectors (QCI) are required to have certification under the Building Performance Institute. The QCI certifies that the work was completed to the standard work specifications. Federal regulations require the technical monitor to have the same skill set as the QCI to review their work. Technical monitors can only review completed units or units that have received a quality control inspection. While employed with Development, the Grievant has never acted as a QCI.

The Ohio Department of Taxation received an inquiry about Job Number 50258 assigned to the Grievant and his inspection of the sump pump at the residence. In his report, the Grievant indicated that the necessary action was to “cover sump slash well pits with airtight covers by set with section the Ohio weatherization grantee, health and safety, H and S plan, section 6.15 and the Ohio weatherization Field Guide, section one Point 6.5 groundwater drainage.” DOD Energy Program Developer Kashuba had noticed a discrepancy in the summary report and followed up with local agency; the Grievant was on paternity leave. During this conversation

¹ The evidence established that the above-referenced statement was misinterpreted to mean there was no cover on the sump pump, resulting in this investigation. The Grievant explained the photo depicted perforations in this cover, and there were two water lines, a green hose and a black hose, basically letting water run onto the cover and run through the cover which flags that the cover was not airtight. The administrative investigate reports contains the following “1. Chief Machado reported that the involved report contained a discrepancy regarding the lack of a sump cover for one of the project sites, even though the accompanying photograph did not support the stated findings.”

with the local agency, Kashuba learned that a full inspection had not occurred and reported the same to Chief Machado.

On March 19 and March 20, 2024, there were two job sites where the homeowner's were unavailable. Regarding the first home, it was reported that the Grievant and local agency representative visited together for a compliance review. When they knocked on the door to gain access to the home for the review, the homeowner did not answer, and the equipment was inaccessible for review; it was reported that the Grievant told the local agency representative that he was going to count it anyway. Regarding the second home, it was reported that the Grievant and local representative arrived at the home, the homeowner was not present, and the two could not access the site. It was reported that the Grievant commented similar to what he allegedly stated after the first home was inaccessible.² It is not disputed that the final certification forms for the two projects are signed by the Grievant, certifying that the houses had been completed in compliance with Ohio Standard Work Specifications.

The allegation was referred to the Labor Relations Administrator for Investigation. The allegation involved the Grievant submitting documentation indicating he had completed site inspections without gaining access to all required areas. In conducting the investigation, the Investigator reviewed the complaint, the Grievant's field report, the signed weather weaterization inspection form, position description, training history, relevant emails, site verification forms, the Quality Control Inspector (QCI) handbook, Home Weatherization Assistance Program Administrative and Technical Monitoring Manual and agency policies. The Investigator testified this information was relevant for him to understand the position, duties, and weatherization program, specifically the standards of conduct and ethics. Based on this review, the Investigator concluded the Grievant submitted site verification forms and a field report that indicated the completed inspections, which he believed had not been fully performed. The Investigator also confirmed the Grievant had prior field inspection experience and had completed multiple trainings. In addition, he interviewed the Interim Deputy Director, Chief Machado, and the Grievant. The Interim Deputy Director indicated that the Grievant did not inspect up to 5% of the

² All the information contained herein relates to the investigation. These allegations were not proven at the arbitration. Neither Kashuba nor the local agency representatives testified. These statements represent hearsay within hearsay.

sites the preceding year. There was no evidence of any corrective counseling or discipline related to the lack of inspection of 5% of the sites or his technical monitoring. The Interim Deputy Director denied any knowledge of prior similar issues with the Grievant but stated his completed reports have not been through. There was no evidence of any discipline for this allegation. The Investigator requested information from the community action personnel, who refused to participate. The Investigator also reviewed the Building Performance Institute, Inc. for Quality Control, Inspector Certification, and Scheme Handbook. During his investigation, he did not review the Ohio Weatherization Grantee Health and Safety Plan, the Ohio Weatherization Field Guide and other source document to determine the culpability of the Grievant.

The Grievant confirmed that he emailed the local agency before the technical monitor reviews scheduled for March 19-20, 2024. In that email, he requested that the jobs be scheduled and the entire client file be available for on-site inspection. It is the responsibility of the local agency, not the technical monitor, to contact homeowners to ensure they are available during inspections. To his knowledge, the local agency contacted the homeowners before and on the day of the inspections. Out of the eight inspections conducted, the Grievant could not access the interior of two homes because the homeowners were not present. He also confirmed that a local agency representative was present with him during all the inspections. The Grievant testified it was common practice for the local agency to schedule backup jobs in case homeowners were unavailable. However, for this instance, no backup jobs were scheduled to substitute for the inaccessible homes.

For the two homes where interior access was not possible, the Grievant completed the inspections by visually and physically inspecting the perimeter/exterior of the home and reviewing the client file, which included detailed documentation and photographs of the work completed inside the home. The Grievant further provided other examples where he determined whether work met the Ohio Standard Work Specifications by thoroughly reviewing the client file, which contains all required documentation and evidence of work completed. In cases such as attic insulation, where the attic hatch is inaccessible, or HVAC installations during winter, where air conditioning units cannot be tested under load, the Grievant relies on the client file to

ensure the work meets the Ohio Standard Work Specification. These files typically include photographs, installation details, receipts, and supporting documentation.

The Weatherization Manager testified regarding policies, expectations, and procedures applicable to technical monitors under the Home Weatherization Assistance Program (HWAP). The Manager stated that technical monitors are responsible for conducting site visits and reviewing completed weatherization projects using established checklists and internal policies. He testified that the policies in effect for March 2024 inspections were outlined in the Program Year 2023 Policy and Procedures Manual and the September 2023 HWAP Administrative and Technical Monitoring Manual. These policies require a complete inspection of the interior and exterior of each home, even though the manual uses terms like “should” and does not explicitly state that inspections must be conducted “physically.” The Manager acknowledged that while in-person inspection is the standard, photographs may be used in certain instances to confirm corrections or verify aspects of work that cannot be accessed or have since been altered. He explained that falsified inspections could have significant consequences, including potential loss of funding, reduced program capacity, and harm to the Department’s credibility. However, he acknowledged that he was unaware that any Department of Energy funding was being reduced due to technical monitor inspections. The Manager was not involved in the investigation or supervision of the Grievant, nor was he present at the pre-disciplinary hearing.

The Manager confirmed that the final certification form for the weatherization project is signed by the Quality Control Inspector (QCI) and the homeowner, certifying that all work has been completed per program standards. Once both signatures are obtained, the Department of Development is typically billed, and funds are issued for the completed job. This process generally occurs before the technical monitor conducts their reviews. Although technical monitors may conduct in-progress visits, those are documented separately and not included in the Department of Energy’s final report on the completed forms. No funding is withheld pending a technical monitor’s inspection.

Development terminated the Grievant on July 24, 2024. At the time of his termination, the Grievant had fifteen (15) years of service. The Grievant had no active discipline on his record at the termination. Grievant testified that his supervisor never discussed any issues with his

submitted reports nor did she provide any documentation that would warrant inclusion in his personnel files. The Investigator confirmed the Grievant's testimony that he did not receive any documented counseling related to his performance as a Technical Monitor, was never placed on a performance improvement plan, and had not received any corrective or disciplinary action from the BPI for failing to follow standards. The Grievant stated that he was on paternity leave the previous year, and it was impossible for him to monitor up to 5% of the project sites for that year; the Grievant was not counseled or disciplined for not monitoring 5%. The Grievant reviewed multiple performance evaluations from April 1, 2019, through September 30, 2023, where he consistently received positive ratings, exceeding or exceeding expectations.

POSITION OF DEVELOPMENT

Development contends management noticed the Grievant about policy, violations, and their consequences. Development asserts that the Grievant was trained on inspection and reporting protocols, and acknowledged receiving and understanding these requirements. The Grievant attended the following training sessions: HWAP Initial Training (June 2009), Annual Inspector Refresher Course (2010-2023), and Advanced Inspection Techniques (2015). Development points out that the Grievant also signed off on policies stating that document falsification could result in immediate termination. Development argues these policies are reasonable and necessary to ensure proper work, safeguard funds, and protect program recipients' safety. Development concludes that it satisfied the reasonable and notice provision of the just cause standard.

Development also contends the investigation was fair, unbiased, and followed established procedures in compliance with the parties' Agreement. Development asserts the Grievant had the opportunity to respond to these allegations with representation, and his input was considered. According to Development, the hearing officer found just cause for discipline based on substantial evidence, including false inspection reports, conflicting documentation, and the Grievant's own admission. Development asserts the evidence established that Grievant, as a Technical Monitor, signed and certified that the work on sites was completed in compliance with the Ohio Weatherization Field Guide-Standard Work Specifications (SWS). The "Final Certification Forms" in question were signed on March 19, 2024, and March 20, 2024. Development argues the "Final Certification Forms" were associated with two (2) separate sites,

which he admitted that he did not visually inspect due to homeowner unavailability; he submitted falsified documents and reports of project sites, and he violated Inspector certification requirements and Development policies by failing to visually check project sites that he signed off on. According to Development, the record establishes the misconduct.

Development further contends the rules have been applied fairly and equally to all employees. Development argues the investigation found no similar violations by others, but if there were, the same rules and discipline would apply. Development also argues the Grievant's actions, falsifying inspection reports, violated key job duties and program rules. Development maintains that falsifying official documents is a serious offense that warrants removal and its position aligns with Development's progressive discipline policy. Development opines that the Grievant knowingly and intentionally falsified inspection certifications, thereby jeopardizing the safety and efficacy of weatherization upgrades provided to vulnerable residents. Development acknowledges some positive reviews in the past but asserts that these reviews do not excuse the seriousness of the Grievant's misconduct.

In addition, Development contends the Wiencek Award is not comparable to this case due to key differences. Development points out that Wiencek involved a different agency with different responsibilities. Further, the misconduct in Wiencek was less severe and involved an incomplete checklist versus full falsification of inspection reports. Unlike Wiencek, the Grievant, in this case, received thorough training and knowingly submitted false information. Development opines that this Grievant's actions posed serious risks to the integrity of a federally funded program. Development explains that falsification could lead to funding loss, legal consequences, and harm to vulnerable residents. Development concludes the termination was appropriate given the seriousness of the misconduct and potential impact.

Moreover, Development contends that prior positive evaluations do not excuse serious misconduct like falsification of official documents. Development asserts that intentional falsification breached trust, risked safety, and jeopardized a critical federal program. Contrary to the assertions of the Union regarding the 2021 COVID-era guidelines allowing remote inspections, the Employer clarifies that updated 2023 policies required in-person inspections. According to Development, the Grievant only reviewed files and photos and did not perform live

video inspections as needed. The Employer notes that no Union witness supported the Grievant's claim of past practice. The Employer maintains there was just cause for the termination.

Lastly, Development contends the termination penalty is appropriate in light of the seriousness of the Grievant's offense and his record with Development. According to Development, termination was the only appropriate disciplinary action to be taken by Development when taking into consideration (1) the seriousness of the Grievant's misconduct, (2) the clarity of Development's policies and procedures at the time of the Grievant's misconduct; (3) Development's consistent treatment of similarly situated employees; (4) Development's adherence to progressive discipline procedures; and (5) the quality of Grievant's work record while employed with Development. Development requests this grievance be denied.

POSITION OF OCSEA

The Union contends the Grievant fulfilled his responsibilities as Technical Monitor when he certified the final certification form. The Union explains that the Quality Control Inspector and the Technical Monitor have clearly defined separate roles within HWAP. The Union points out that the QCI (not the Grievant) and the homeowner had already signed the forms, indicating the work was completed on November 20 and December 6, 2023. The Union asserts that based on these signatures, funds were released to the contractor before the Grievant conducted his inspections on March 19-20, 2024, three to four months later. The Union suggests that the email from the Grievant to the contractor shows he followed protocol in requesting the job files be prepared and made available for review. The Union maintains that Grievant sought to comply with his responsibilities to maintain procedural compliance with the HWAP standards.

The Union also contends the Grievant's actions were within the bounds of HWAP guidelines. The Union argues that no written policy in HWAP manuals or agency guidelines prohibits a technical monitor from relying on the client's file to perform a complete visual inspection when physical access is not possible. The Union explains that according to the HWAP Administrative and Technical Monitoring Manual, technical monitors are given discretion in conducting site visits, stating that "each home is unique" and that the process should follow a guideline rather than a rigid procedure. The Union points out that the manual emphasizes the importance of a thorough examination of the job file and supporting documentation. The Union claims the Grievant only

adapted his approach by inspecting the home's exterior, documenting viable concerns, and conducting a thorough review of the standardized client file. The Union concludes the policy does not mandate in-person interior inspections nor prohibits using the file to complete an inspection under these circumstances.

The Union further contends the Agency conducted a flawed investigation resulting in no just cause for discipline. The Union argues that the Investigator, who was newly trained, had no prior experience investigating employee conduct. The Union asserts the Investigator did not interview key witnesses, including those involved in the complaint or local contractor staff. The Union highlights the Investigator's testimony that he failed to review critical documents, such as the Ohio Standard Work Specifications, which are central to the allegations. Statements relied upon by management were not verified, signed or included in the official record. The Union maintains the Investigator failed to confirm whether other employees followed similar practices. The Union explains the investigation stemmed from a misinterpretation of the Grievant's report, not the inspections in question. The Union concludes the investigation lacked thoroughness, and the Grievant was terminated without sufficient evidence and compliance with proper disciplinary procedures.

In addition, the Union contends that Development overstepped its authority by terminating the Grievant, asserting that the policy violations cited under DOD Policy 8.2 do not align with the alleged conduct. Specifically, Rules 1.b. and 1.c involve document types unrelated to the Grievant's actions. Rule 1.f., which addresses providing false information about assignments, would be more applicable. The Union argues that under Agency guidelines, a first offense calls for reprimand or suspension, and not termination. Similarly, Rule 3.e., concerning conduct that impairs job performance or the Agency's mission, also lists reprimand or suspension as the appropriate penalties. Further, a violation of 6.B., a violation of O.R.C. 124.34, states that discipline is based on the severity of the offense; the Union argues any violation should be considered a minor offense. The Union also argues the purpose of discipline is to correct behavior, not punish. The Grievant was a long-term employee with the Agency for 15 years. The Union notes that the Grievant had no prior discipline, was not on a performance improvement plan, and had consistently met or exceeded expectations in annual reviews since 2019. The

Union opines that if a violation is found to have occurred, the offense should be considered minor, not warranting termination.

Moreover, the Union contends the Agency's actions undermine the claim that the Grievant's actions had any material impact. The Agency argues the Grievant completed eight technical monitoring inspections on March 19-20, 2024, and entered them into the DOE tracking. The Union points to the testimony of the Agency Manager that the DOE report was not due until several months later, the database entries are editable, and funding was issued before technical reviews. The Union suggests that the Agency's failure to take such action suggests either they did not review the inspections as improper or neglected to act appropriately if they did. The Agency opines there was no just cause for termination.

Lastly, the Union respectfully requests that this grievance be sustained in its entirety and that the Grievant be reinstated to his position as an Energy Analyst 2 in the Ohio Department of Development. The Union also requests an award of all back pay, missed overtime opportunities, and benefits, except for health insurance, as no costs were incurred during his termination period, restoration of his seniority credits and leave balances, reimbursement to the Union for any dues incurred during that period, and otherwise made whole.

Discussion:

Development charged the Grievant with falsifying inspection records and compromising the Agency's mission, resulting in the removal for violation of Development policies 8.2(1)(B) (C)(F), 8.2 (3)(E), and 8.2(6)(b). Under the terms of the parties' Agreement, Development must establish just cause for any disciplinary action, such as the removal. Notably, the Grievant had no prior discipline at his removal. In summary dismissal cases, just cause must be supported by clear and convincing evidence, particularly when no prior discipline has been issued. This heightened standard requires that the evidence presented be substantially more probable than not to be true.

The Just Cause Standard generally requires that discipline be based on a fair and objective investigation, that the employee had notice of the rules and expectations, proven misconduct, and that the penalty is commensurate with the offense. While not all seven steps of Just Cause are at issue, a complete and impartial investigation is fundamental to a just outcome. The investigation

originated from misreading one of the Grievant's reports rather than any alleged misconduct related to the inspection. The Union contends the Investigator lacked experience and failed to conduct a complete inquiry. Key individuals, such as the complainant and the local agency staff, were not interviewed. The Investigator admitted during testimony that he did not review essential documents, including the Ohio Standard Work Specifications, which are central to evaluating the Grievant's actions. Moreover, the statements used by management in support of the charges were neither verified, signed, or formally included in the record. The investigations failed to assess whether the Grievant's actions were consistent with practices. These deficiencies call into question the reliability and completeness of the investigative process. When viewed against the high evidentiary burden required in a summary dismissal for alleged falsification, the shortcomings in the investigation undermine the Agency's position.

Even though the investigation was incomplete and lacked thoroughness, the ultimate question is whether the alleged misconduct actually occurred and whether the penalty of termination is appropriate under the Just Cause Standard. In arbitration, deficiencies in the investigation process may weaken the employer's case but are not automatically dispositive of a grievance. The Arbitrator must still determine whether sufficient credible evidence exists to establish misconduct and whether the imposed discipline was proportionate.

This analysis starts with the admission of the Grievant that he could not access two homes during his technical monitor reviews. The common practice was for the local Agency to schedule other homes for inspection, which was not done. The Grievant then credibly explained that he relied on the client file and external inspection, which can be done for another specific type of projects that he cited and in exigent circumstances, as mentioned by the Manager.

During the COVID-19 pandemic, the Agency permitted virtual or remote inspections, including reliance on client files and photos, which suggests that remote methods have been accepted in exceptional circumstances. The policy was subsequently updated in 2023, and both parties offer differing interpretations of the revised language. The Agency contends the current policy requires in-person inspections. In contrast, the Union maintains that it does not explicitly prohibit remote reviews, such as file-based evaluations, when full home access is impossible.

As with contractual language, policies must be read in their entirety. When considered as a whole, the updates emphasize in-person home inspections as the preferred method. However, this raises a critical question: When a homeowner is unavailable for a scheduled visit, does that constitute an emergency that justifies deviation from the standard procedure? The Grievant testified that it is common practice for the local Agency to have backup jobs available to review, but none were scheduled on the dates in question. His testimony is consistent with HWAP Assistance Program guidance that because clients are often difficult to contact or refuse entry, the list should contain enough jobs to ensure enough home visits can be scheduled. This language indicates that homeowner unavailability is a known and anticipated issue, not an emergency, and the system is designed to accommodate such occurrences with backup job reviews. Without a documented policy exception or an emergent condition preventing rescheduling or reassignment, the Grievant's reliance on client file documentation and exterior inspection in this instance is in noncompliance with the policy.

The Agency charged the Grievant with falsification under Development Policies 8.2.(1)(b), 8.2 (1)(c), and 8.2(1)(f), alleging that the Grievant submitted fraudulent or inaccurate technical monitoring reports for the two home inspections where he did not access the interior of the units. Removal was imposed as a first offense based on Development's claims of falsification and a violation of trust and program integrity. After a careful review of the testimony, documentary evidence, and applicable policy standards, this Arbitrator is not convinced the evidence meets the required burden of clear and convincing proof necessary to establish a charge of falsification.

The Grievant openly acknowledged that he could not gain interior access to two homes due to homeowner unavailability. He did not conceal this fact or attempt to fabricate access. Instead, he relied on a combination of visual exterior inspection and the detailed client file, an approach he testified had been accepted in past situations, including during COVID-19, and another specific type of monitoring. According to the Manager, the applicable policies and procedural manuals, while favoring in-person inspections, do not explicitly prohibit file-based reviews when interior access is not possible. The Manager further explained that he would have made the notation.

Development's position rests mainly on the assertion that the Grievant's reports deviated from the preferred practice. However, deviation alone does not constitute falsification. The evidence does not establish that the Grievant knowingly submitted inaccurate reports to defraud or mislead the Agency or any external entity. Accordingly, this Arbitrator finds that the allegations of falsification are not substantiated in Development Policies 8.2.(1)(b) and 8.2(1)(c), which are overlapping charges with different remedies. This Arbitrator does find a violation of Development Policies 8.2(1)(f). As noted above, without a documented policy exception or an emergent condition preventing rescheduling or reassignment, certifying the inspection as complete without a full inspection is inaccurate.

Development also charged the Grievant with violating Development Policies 8.2.(3)(e). This provision applies when an employee's actions could compromise the mission of the Agency, even if actual harm has not yet occurred. The Manager testified that if technical monitoring inspections were falsified, the consequence could include loss of funding, program capacity, and public trust. The Manager admitted that no such harm actually occurred. Moreover, to justify discipline under this rule, the Agency must show that the Grievant's actions had the potential to significantly undermine the Agency's goals, credibility, or operations and were not merely speculative. The Technical Monitor reviews the work of the QSI after both the QSI and homeowner have certified it was complete and funds have been released before the technical review. No evidence was introduced that the QSI did not adequately perform his job. Additionally, it is noted that Development did not pull the reports from the database before submission. Even in the absence of proven harm, the general public may still view the situation with concern, given the government's responsibility to protect the homeowners' interests. The perception that potential misconduct is being overlooked can raise questions about accountability and quality assurance of the projects, regardless of whether the facts support any fraudulent wrongdoing. The Arbitrator finds the Grievant violated Development Policies 8.2.(3)(e) in addition to 8.2(1)(f), resulting in a violation of DEV Policy 8.2(6)(b).

The Agency's issuance of removal constitutes an unreasonable bypass of progressive discipline, especially where the Grievant had a 15-year tenure, a satisfactory performance rate, and no prior discipline or counseling. The Grievant's misconduct in this instance warrants

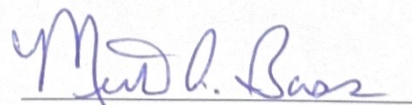
corrective discipline and not termination under the parties' Agreement Article 24.02 - Progressive Discipline. That said, a consequential and meaningful penalty is warranted because the public interest is significant in administering the weatherization program and given the expectation of actual in-person visits. The penalty is reduced to a three-day suspension for discipline and progression. The Grievant is further awarded back pay for seven (7) months, full seniority rights and benefits and leave balances, reimbursement to the Union for any dues incurred during that period, and otherwise made whole.

Development attempts to differentiate this Arbitrator's previous opinion in Wiencek. While there are differences between the two cases, Wiencek affirms that termination should not be imposed absent clear evidence of intentional misconduct and after considering the employee's record and mitigating circumstances. The Wiencek decision was based on the prolonged and repeated egregious misconduct, not two occurrences as in the instant case, and the practice established within the specific Agency. There is no evidence the Grievant's report caused harm to a participant, led to unsafe conditions, or resulted in federal sanctions or funding loss. Unlike Wiencek, the Grievant reviewed the work of the QCI, who had already certified the work. Still, all that being said, the public interest in the weatherization program is significant, and a meaningful penalty is warranted, as set forth above.

AWARD

For the reasons set forth above, this Arbitrator sustains the grievance in part. This Arbitrator finds the Grievant violated Development Policies 8.2.(3)(e), 8.2(1)(f), and 8.2(6)(b). Grievant is reinstated to his position as Energy Analyst 2/Technical Monitor and the discipline is reduced to a 3-day suspension. The Grievant is awarded seven (7) months of backpay with restoration of benefits and union dues.

Dated June 20, 2025


Meeta A. Bass, Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Award was served on the following individuals via electronic mail this 20th day of June, 2025:

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